



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Color Dynamics, Inc.--Reconsideration

File: B-236033.3

Date: December 22, 1989

DIGEST

Decision holding that cancellation of invitation for bids after bid opening was proper is affirmed where agency implicitly determined that protester's bid was unreasonably high and that cancellation would be in the government's best interest since on resolicitation in subsequent fiscal year agency could expect to receive lower prices and thus to acquire the required work at lower cost to the government.

DECISION

Color Dynamics, Inc., requests reconsideration of our decision Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, denying its protest challenging the cancellation of invitation for bids (IFB) No. F64605-89-B-0001, for exterior painting of military family housing at Hickam Air Force Base, Hawaii.

We affirm our prior decision.

After bid opening under the IFB, the Air Force twice requested bidders to extend their bid acceptance periods. The two low bidders ultimately were rejected as nonresponsive for revising their bid prices in connection with their bid acceptance period extensions. Subsequently, the Army determined that it would not be in the government's best interest to provide funding for the project because while the bid submitted by Color Dynamics, the bidder in line for award, was below the government estimate, it also was significantly higher than the bids of the two lower bidders.^{1/} After the contracting officer was advised that no funding for the project would be provided, he canceled

^{1/} Although the procurement was conducted by the Air Force, funding for the project was to be provided by the Army, which is responsible for funding military family housing maintenance repair projects on Oahu, Hawaii, where the base is located.

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the IFB and advised the bidders that the requirement would be resolicited in the following fiscal year.

Color Dynamics then protested the cancellation of the IFB to our Office. In our decision on the protest, we concluded that the cancellation was proper. We found that the Army implicitly determined that Color Dynamics' bid was unreasonably high and in effect decided that it was in the government's best interest to cancel the IFB and resolicit in the hope of receiving lower bid prices in the next fiscal year.

In its request for reconsideration, Color Dynamics argues that the agency's determination that it would receive lower bids if it resolicited does not constitute the "compelling reason" for cancellation required by Federal Acquisition Regulation (FAR) § 14.404-1(a)(1). Color Dynamics also argues that there was no support in the record for our conclusion that the agency had determined that Color Dynamics' bid price was unreasonably high.

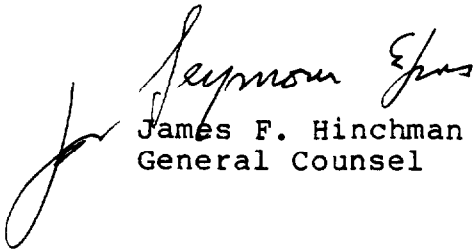
While, as Color Dynamics states, there was no explicit determination by the Army regarding Color Dynamics' bid price, we found that the Army had implicitly determined that Color Dynamics' bid was unreasonably high. This implicit determination in our view supports cancellation under FAR § 14.404-1(c)(6), which specifically authorizes cancellation based on unreasonable prices. Moreover, as noted in the initial decision, the agency effectively determined that it was in the best interests of the government to cancel and recompet next year in the expectation of receiving lower bids and thus accomplishing the required work at lower cost to the government. See FAR § 14.404-1(c)(9).

Color Dynamics contends that allowing cancellation under these circumstances invites abuse by contracting agencies which may decide to cancel and resolicit simply in the hope of achieving lower prices to the government through exposure of bid prices and a resulting auction. We think that the hypothetical case Color Dynamics suggests is distinguishable from the circumstances at issue since in this case, the agency had specific evidence--the other lower bids received at bid opening--that suggested that resolicitation would yield lower prices.

Moreover, Color Dynamics' position in essence would require our Office to substitute our judgment for that of the contracting agency with regard to its minimum needs. That is, by withholding funding and thereby causing cancellation of the IFB, the Army in essence decided that it did not require the work called for by the IFB to be performed during the current fiscal year, and instead, could wait

until the following year to procure the services. Other than Color Dynamics' own commercial interest in performing the work at its current price, we see no basis to require the government to procure work immediately which it has determined can be postponed without compromising its minimum needs and which, if resolicited later, reasonably can be expected to be performed at lower cost.

Our prior decision is affirmed.

James F. Hinchman
General Counsel